

**ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER  
BUSINESS BUREAUS**

***ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM***

**FORMAL REVIEW**  
Case Number: 17-2012

COMPANY: )  
Microsoft Advertising )  
)  
)  
CHALLENGER: )  
Online Interest-Based )  
Advertising Accountability Program )  
)  
)

**DECISION**

DATE: September xx, 2012

**SYNOPSIS**

The Transparency Principle requires that covered entities provide consumers with real-time enhanced notice when an interest-based ad is served.

**COMPANY STATUS**

Microsoft Advertising (Microsoft or the company) is a provider of search and display advertising solutions worldwide. Microsoft engages in the collection and use of data for online behavioral advertising (OBA) purposes as defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).<sup>1</sup> Atlas Solutions (Atlas), owned and operated

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<sup>1</sup> “Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.” (OBA Principles at 9-10, Definition G.).

by Microsoft, is an ad serving platform that enables agencies and advertisers to deliver their advertisements to ad networks and websites.

## **OBA PRACTICE AT ISSUE**

The Transparency Principle is designed to give consumers knowledge about OBA data collection and use practices that take place invisibly behind the scenes. One of the innovations provided by the Transparency Principle is the requirement for third parties to provide real-time notice, called “enhanced notice,” whenever the third party is collecting data for OBA or serving an OBA ad. This is an important step forward in providing transparency about OBA because consumers have notice and an opportunity to make a choice about participation in OBA at the time the third party collects data or serves an interest-based advertisement.

Enhanced notice is provided through a “clear, meaningful and prominent link” (i.e., the “enhanced notice link”) from the Web page on which the third party is collecting data for OBA purposes or serving an advertisement based on user interests inferred from a user’s Web browsing activities.<sup>2</sup> The enhanced notice link directs the consumer to information about the third party’s OBA data collection and use practices and an opportunity to exercise choice.<sup>3</sup> The third party is provided with flexibility in how the enhanced notice link is provided and whether it is provided by the third party (either itself or using a provider) or on behalf of the third party by a first party (also called the website operator or publisher).

If the third party provides the enhanced notice, it generally uses the Digital Advertising Alliance’s (DAA) Advertising Option Icon (AdChoices Icon) as the link to direct the consumer to its OBA disclosure and opt-out mechanism. The third party may place the link: 1) in or around the advertisement it delivers on the publisher’s website; or, 2) in coordination with the website operator, elsewhere on the website operator’s Web page. Clicking on the link takes the consumer directly to that part of the third party’s own website where the third party discloses its OBA practices and provides an opt out.

If the first party website operator is providing the enhanced notice link on behalf of the third party, it generally uses a footer link. This footer link, which must be distinct from the website operator’s own privacy policy link, should take the consumer directly to the website operator’s website disclosure of third-party OBA activity, which should then either: 1) link to an industry-developed choice page such as the DAA Consumer Choice Page where the third party’s opt-out mechanism is available; or 2) individually list all third parties collecting or using data on the operator’s website and provide a link to each third-party’s website OBA disclosure and opt-out mechanism.<sup>4</sup>

The practice at issue is whether Microsoft was providing the consumer with enhanced notice on interest-based ads that its ad serving platform, Atlas, was serving for a Kia Motors America (Kia) campaign.

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<sup>2</sup> OBA Principles at 13, Principle II.A.(2)(a).

<sup>3</sup> The DAA Consumer Choice Page is located at [www.aboutads.info/choices](http://www.aboutads.info/choices).

<sup>4</sup> OBA Principles at 13, Principle II.A.(2).

## **BASIS OF INQUIRY**

The Accountability Program believes that Microsoft, through its ad serving platform Atlas, served, or facilitated the serving of, retargeted ads lacking the requisite enhanced notice. In multiple tests, using five Web browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari), the Accountability Program visited the Kia website ([www.kia.com](http://www.kia.com)) where we observed Atlas collecting user data through tracking pixels embedded throughout the site. After browsing the Kia website for a time, the Accountability Program continued to visit, within the same browsing session, non-affiliated websites. In several tests, the Accountability Program was served ads for Kia and Atlas was observed in the ad serving chain.

The ease with which the Accountability Program was able to reproduce this test on different devices and with different browsers appears to indicate that the Kia ads we received were likely the result of our recent visit to the Kia website. However, none of the Kia ads delivered to the Accountability Program contained enhanced notice as required by the OBA Principles.

## **COMPANY'S POSITION**

In its response to the Accountability Program's formal inquiry, Microsoft confirmed that the Kia ads in question were served through its Atlas ad serving platform. Microsoft stated that Kia's advertising agency for the campaign used the Atlas platform to serve the Kia ads, but that no Microsoft targeting data was used in the campaign. Microsoft explained that if Kia's ad agency had opted for an additional Atlas service that leverages Microsoft OBA data, it would have "impose[d] additional contractual requirements that mandate participating customers display the [AdChoices Icon] on these targeted ads." Microsoft also explained that it offers Atlas ad serving platform customers the option of having Atlas provide the AdChoices Icon free of charge on interest-based ads or they may choose to make their own compliance arrangements.

## **DECISION**

The Accountability Program finds that Microsoft was not in violation of the Transparency Principle. Microsoft's response to our formal inquiry revealed that it was, through Atlas, acting solely as an ad serving platform for the Kia campaign and was not collecting or using data for OBA purposes. This is consistent with the OBA Principles' definition of "ad delivery," as it was "merely providing the underlying technology that is used by another entity."<sup>5</sup> As stated in the commentary to the OBA Principles on page 21, "Such Ad Delivery is not covered by the definition of Online Behavioral Advertising and is thus outside of the requirements in the Principles."

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<sup>5</sup> OBA Principles Commentary at 21.

## **CONCLUSION**

The credibility of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the industry that engage in OBA. The Accountability Program's monitoring and complaint processes are designed to identify areas of possible non-compliance and to work with companies to expeditiously rectify non-compliance.

Although the Accountability Program finds that Microsoft's Atlas platform, when used solely as an ad delivery service, is not engaged in OBA under the definition in the OBA Principles, we are pleased to see that Atlas provides its customers engaged in OBA with the free option of including the AdChoices Icon on OBA ads with little more than a click of a button as an alternative to finding another mechanism for providing notice and choice. This kind of commitment to the OBA Principles will accelerate both compliance throughout the ecosystem and recognition by consumers of the greater transparency and choice being provided every day.

## **COMPANY'S STATEMENT**

Microsoft is a strong proponent of The Self-Regulatory Program for Online Behavioral Advertising (OBA). Microsoft believes that providing enhanced notice on OBA ads provides consumers with greater transparency and choice, and has implemented this notice functionality by allowing advertisers using Microsoft's Atlas ad serving platform the option of including the enhanced notice in ads themselves, or having Microsoft include the AdChoices logo in the advertiser's ads. This option gives advertisers flexibility on how they implement enhanced notice, and provides an easy mechanism for advertisers to include the enhanced notice in their ads. Microsoft commends the BBB for its work in administering the Online Interest-Based Advertising Accountability Program.

## **DISPOSITION OF DECISION**

No violation found.



**Genie Barton**  
**Vice President and Director**  
**Online Interest-Based Advertising Accountability Program**